

or industrial banking activities in the geographic areas to be served by the acquired office(s);

(ii) The assets acquired during any twelve-month period do not represent more than 25 percent of the assets (on a consolidated basis) of the acquiring consumer finance company, mortgage company or industrial bank, or more than \$25 million, whichever amount is less;

(iii) The assets acquired do not represent more than 50 percent of the selling company's consolidated assets that are devoted to the consumer finance, residential mortgage banking, or industrial banking business;

(iv) The acquiring company notifies the Reserve Bank of the acquisition within 30 days after the acquisition; and

(v) The acquiring company, after giving effect to the transaction, meets the Board's Capital Adequacy Guidelines (Appendix A to Subparts A through E) and the Board has not previously notified the acquiring company that it may not acquire assets under the exemption in this paragraph.

(d) *Acquisition of securities by subsidiary banks*—(1) *National bank*. A national bank or its subsidiary may, without the Board's approval under this subpart, acquire or retain securities on the basis of section 4(c)(5) of the BHC Act in accordance with the regulations of the Comptroller of the Currency.

(2) *State bank*. A state-chartered bank or its subsidiary may, insofar as Federal law is concerned and without the Board's prior approval under this subpart:

(i) Acquire or retain securities, on the basis of section 4(c)(5) of the BHC Act, of the kinds and amounts explicitly eligible by federal statute for investment by a national bank; or

(ii) Acquire or retain all (but, except for directors' qualifying shares, not less than all) of the securities of a company that engages solely in activities in which the parent bank may engage, at locations at which the bank may engage in the activity, and subject to the same limitations as if the bank were engaging in the activity directly.

(e) *Activities and securities of new bank holding companies*. A company that becomes a bank holding company may,

for a period of two years, engage in nonbanking activities and control voting securities or assets of a nonbank subsidiary, if the bank holding company engaged in such activities or controlled such voting securities or assets on the date it became a bank holding company. The Board may grant requests for up to three one-year extensions of the two-year period.

(f) *Grandfathered activities and securities*. Unless the Board orders divestiture or termination under section 4(a)(2) of the BHC Act, a "company covered in 1970," as defined in section 2(b) of the BHC Act, may:

(1) Retain voting securities or assets and engage in activities that it has lawfully held or engaged in continuously since June 30, 1968; and

(2) Acquire voting securities of any newly-formed company to engage in such activities.

(g) *Securities or activities exempt under Regulation K*. A bank holding company may acquire voting securities or assets and engage in activities as authorized in Regulation K (12 CFR Part 211).

§ 225.23 Procedures for notices to engage in nonbanking activities.

(a) *Notice required for nonbanking activities*. A notice for the Board's prior approval under § 225.21(a) to engage in or acquire a company engaged in a nonbanking activity shall be filed by a bank holding company (including a company seeking to become a bank holding company) with the appropriate Reserve Bank in accordance with this section and the Board's Rules of Procedure (12 CFR 262.3).

(1) *Engaging de novo in listed activities*. A bank holding company seeking to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity listed in § 225.25 shall file a notice containing the following:

(i) A description of the activities to be conducted;

(ii) The identity of the company that will conduct the activity; and

(iii) If the notificant proposes to conduct the activity through an existing subsidiary, a description of the existing activities of the subsidiary.

(2) *Acquiring company engaged in listed activities*. A bank holding company

Federal Reserve System

§ 225.23

seeking to acquire or control voting securities or assets of a company engaged in a nonbanking activity listed in § 225.25 shall file a notice containing the following:

(i) A description of the proposal, including a description of each proposed activity, and the effect of the proposal on competition among entities engaging in each proposed activity;

(ii) The identity of any entity involved in the proposal, and if the notificant proposes to conduct the activity through an existing subsidiary, a description of the existing activities of the subsidiary;

(iii) A statement of the public benefits that can reasonably be expected to result from the proposal; and

(iv) A description of the terms and sources of funds for the transaction; a copy of any pertinent purchase agreement(s); balance sheet and income statements for the most recent fiscal quarter and year-end for any company to be acquired; parent company only and consolidated *pro forma* balance sheets for the notificant as of the most recent fiscal quarter; and calculations of *pro forma* consolidated risk-based capital ratios and leverage ratio for the notificant as of the most recent fiscal quarter.

(3) *Engaging in or acquiring company to engage in unlisted activities.* A bank holding company seeking to commence or to engage *de novo*, or to acquire or control voting securities or assets of a company engaged in, any activity not listed in § 225.25 shall file a notice containing the following:

(i) Evidence that the proposed activity is so closely related to banking or managing or controlling banks as to be a proper incident thereto;

(ii) A commitment to comply with all conditions and limitations that have been established by the Board governing the proposed activity; and

(iii) The information required in paragraph (a)(2) of this section, as appropriate.

(b) *Notice provided to Board.* The Reserve Bank shall immediately send to the Board a copy of any notice received under paragraphs (a)(2) or (a)(3) of this section.

(c) *Notice to public—(1) Listed activities and activities approved by order.* A Re-

serve Bank that receives a notice involving an activity listed in § 225.25 or previously approved by the Board by order shall immediately send notice of receipt of the proposal to the Board for publication in the FEDERAL REGISTER. The FEDERAL REGISTER notice shall invite public comment on the proposal for a period of 15 days.

(2) *New activities—(i) In general.* In the case of a notice under this section involving an activity that is not listed in § 225.25 and that has not been previously approved by the Board by order, the Board shall send notice of the proposal to the FEDERAL REGISTER for publication, unless the Board determines that the notificant has not demonstrated that the activity is so closely related to banking or to managing or controlling banks as to be a proper incident thereto. The FEDERAL REGISTER notice shall invite public comment on the proposal for a reasonable period of time, generally for 30 days.

(ii) *Time for publication.* The Board shall send the notice required under this paragraph to the FEDERAL REGISTER within 10 business days of acceptance by the Reserve Bank. The Board may extend the 10-day period for an additional 30 calendar days upon notice to the notificant. In the event notice of a proposal is not published for comment, the Board shall inform the notificant of the reasons for the decision.

(d) *Action on notices—(1) Reserve Bank action—(i) In general.* Within 30 calendar days after receipt by the Reserve Bank of a notice filed pursuant to paragraphs (a)(1) or (a)(2) of this section, the Reserve Bank shall:

(A) Approve the notice; or

(B) Refer the notice to the Board for decision because substantive adverse comment has been received or because action under delegated authority is not appropriate.

(ii) *Return of incomplete notice.* Within 15 calendar days of receipt, the Reserve Bank may return any notice as informationally incomplete that does not contain all of the information required by this subpart. The return of such a notice shall be deemed action on the notice.

(iii) *Extension of period for action.* The Reserve Bank may, within the 30-day

period provided in this paragraph for action on a notice, extend such 30-day period for an additional 15 calendar days.

(iv) *Notice of action.* The Reserve Bank shall promptly notify the bank holding company of any action, referral or extension under this paragraph.

(v) *Close of public comment period.* The Reserve Bank shall not approve any notice under this paragraph prior to the fifth business day after the close of the public comment period, unless an emergency exists that requires expedited or immediate action.

(2) *Board action*—(i) *Internal schedule.* The Board seeks to act on every notice referred to it for decision within 60 days of the date that the notice is filed with the Reserve Bank. If the Board is unable to act within this period, the Board will notify the notificant and explain the reasons and the date by which the Board expects to act.

(ii) *Required time limit for Board action.* The Board shall act on any notice under this section that is referred to it for decision within 60 calendar days after the submission of a complete notice.

(iii) *Extension of required period for action*—(A) *In general.* The Board may extend the 60-day period required for Board action under paragraph (d)(2)(ii) of this section for an additional 30 days upon notice to the notificant.

(B) *Unlisted activities.* If a notice involves a proposal to engage in an activity that is not listed in § 225.25, the Board may extend the period required for Board action under paragraph (d)(2)(ii) of this section for an additional 90 days. This 90-day extension is in addition to the 30-day extension period provided in paragraph (d)(2)(iii)(A) of this section. The Board shall notify the notificant that the notice period has been extended and explain the reasons for the extension.

(3) *Requests for additional information.* The Board or the Reserve Bank may at any time request any additional information that either believes is needed for a decision on any notice under this subpart.

(4) *Tolling of period.* The Board or the Reserve Bank, as the case may be, may at any time extend or toll the time pe-

riod for action on a notice for any period with the consent of the notificant.

(5) *Approval through failure to act.* A notice under this subpart shall be deemed to be approved at the conclusion of the period that begins on the date the complete notice is received by the Reserve Bank or the Board and that ends 60 calendar days plus any applicable extension and tolling period thereafter.

(6) *Complete notice.* A notice shall be deemed to be complete for purposes of this subpart at such time as it contains all information required by this subpart and all other information requested by the Board or the Reserve Bank in connection with the particular notice.

(e) *Expedited procedure for small acquisitions*—(1) *Filing notice.* As an alternative to the notice procedure of paragraph (a)(2) of this section, a bank holding company may satisfy the notice requirement of this section in connection with the acquisition of voting securities or assets of a company engaged in an activity listed in § 225.25 by:

(i) Providing the appropriate Reserve Bank with a description of the transaction; and either

(ii) Submitting a copy of a newspaper notice in the form prescribed by the Board; or

(iii) Requesting the Board to publish notice of the proposal in the FEDERAL REGISTER as provided in paragraph (c)(1) of this section.

(2) *Contents of publication.* A newspaper notice under this subsection shall be published in a newspaper of general circulation in the areas to be served as a result of the acquisition and shall provide an opportunity for interested persons to comment on the notice for a period of at least 10 calendar days.

(3) *Criteria for use of expedited procedure.* The procedure in this paragraph is available only if:

(i) Neither the book value of the assets to be acquired nor the gross consideration to be paid for the securities or assets exceeds the greater of:

(A) \$15 million; or

(B) Five percent of the consolidated assets of the acquiring company up to a maximum of \$300 million;

(ii) The bank holding company has previously received Board approval to engage in the activity involved in the acquisition; and

(iii) The bank holding company meets the Board's Capital Adequacy Guidelines (Appendix A of subparts A through E of this part).

(4) *Action on notice.* Within 5 business days after the close of the comment period specified in the FEDERAL REGISTER notice or within 15 calendar days after receipt by the Reserve Bank of the newspaper notice, the Reserve Bank shall either approve the proposal or refer it to the Board for decision if action under delegated authority is not appropriate. The Board shall act in accordance with paragraph (d)(2) of this section on a notice under this paragraph that is referred to it for decision. The Reserve Bank, upon written notice to the notificant, may extend the time period for approval under this paragraph for a reasonable period of time not to exceed 30 days.

(f) *Hearings—(1) Procedure to request hearing.* Any request for a hearing on a notice under this section shall comply with the provisions of 12 CFR 262.3(e).

(2) *Determination to hold hearing.* The Board may order a formal or informal hearing or other proceeding on a notice as provided in 12 CFR 262.3(i)(2). The Board shall order a hearing only if there are disputed issues of material fact that cannot be resolved in some other manner.

(3) *Extension of period for hearing.* The Board may extend the time for action on any notice for such time as is reasonably necessary to conduct a hearing and evaluate the hearing record. Such extension shall not exceed 91 calendar days after the date of submission to the Board of the complete record on the notice. The procedures for computation of the 91-day rule as set forth in § 225.14(g) apply to notices under this subpart that involve hearings.

(g) *Notice to expand or alter nonbanking activities—(1) De novo expansion.* A notice under paragraph (a)(1) of this section is required to open a new office or to form a subsidiary to engage in, or to relocate an existing office engaged in, a nonbanking activity that the Board has previously approved for

the bank holding company under this regulation, only if:

(i) The Board's prior approval was limited geographically;

(ii) The activity is to be conducted in a country outside of the United States and the bank holding company has not previously received prior Board approval under this regulation to engage in the activity in that country; or

(iii) The Board or appropriate Reserve Bank has notified the company that a notice under paragraph (a)(1) of this section is required.

(2) *Activities outside United States.* With respect to activities to be engaged in outside the United States that require approval under this subpart, the procedures of this section apply only to activities to be engaged in directly by a bank holding company that is not a qualifying foreign banking organization or by a nonbank subsidiary of a bank holding company approved under this subpart. Regulation K (12 CFR part 211) governs other international operations of bank holding companies.

(3) *Alteration of nonbanking activity.* A notice under paragraph (a)(1) of this section is required to alter a nonbanking activity in any material respect from that considered by the Board in acting on the application or notice to engage in the activity.

(h) *Emergency thrift institution acquisitions.* In the case of a notice to acquire a thrift institution, the Board may modify or dispense with the public notice and hearing requirements of this section if the Board finds that an emergency exists that requires the Board to act immediately and the primary Federal regulator of the institution concurs.

[Reg. Y, 59 FR 54803, Nov. 2, 1994]

§ 225.24 Factors considered in acting on nonbanking proposals.

(a) *In general.* In evaluating a notice under § 225.23, the Board shall consider whether the performance by the notificant of the activities can reasonably be expected to produce benefits to the public (such as greater convenience, increased competition, and gains in efficiency) that outweigh possible adverse effects (such as undue concentration of resources, decreased or